

CENTER FOR DISABILITY ACCESS
Amanda Seabock, Esq., SBN 289900
Prathima Price, Esq., SBN 321378
Dennis Price, Esq., SBN 279082
Mail: 8033 Linda Vista Road, Suite 200
San Diego, CA 92111
(858) 375-7385; (888) 422-5191 fax
amandas@potterhandy.com

Attorneys for Plaintiff

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

Scott Johnson

Plaintiff,

v.

Mark B. Fredkin;
Gary E. Fredkin;
Summit Marble & Cabinet, Inc., a
California Corporation

Defendants.

Case No.

**Complaint For Damages And
Injunctive Relief For Violations
Of: Americans With Disabilities
Act; Unruh Civil Rights Act**

Plaintiff Scott Johnson complains of Mark B. Fredkin; Gary E. Fredkin; Summit Marble & Cabinet, Inc., a California Corporation; and alleges as follows:

PARTIES:

1. Plaintiff is a California resident with physical disabilities. Plaintiff is a level C-5 quadriplegic. He cannot walk and also has significant manual dexterity impairments. He uses a wheelchair for mobility and has a specially equipped van.

2. Defendants Mark B. Fredkin and Gary E. Fredkin owned the real

1 property located at or about 1713 Rogers Ave, San Jose, California, between
2 December 2018 and July 2020.

3 3. Defendants Mark B. Fredkin and Gary E. Fredkin own the real property
4 located at or about 1713 Rogers Ave, San Jose, California, currently.

5 4. Defendant Summit Marble & Cabinet, Inc. owned Summit Marble &
6 Cabinet located at or about 1713 Rogers Ave, San Jose, California, between
7 December 2018 and July 2020.

8 5. Defendant Summit Marble & Cabinet, Inc. owns Summit Marble &
9 Cabinet located at or about 1713 Rogers Ave, San Jose, California, currently.

10 6. Plaintiff does not know the true names of Defendants, their business
11 capacities, their ownership connection to the property and business, or their
12 relative responsibilities in causing the access violations herein complained of,
13 and alleges a joint venture and common enterprise by all such Defendants.
14 Plaintiff is informed and believes that each of the Defendants herein is
15 responsible in some capacity for the events herein alleged, or is a necessary
16 party for obtaining appropriate relief. Plaintiff will seek leave to amend when
17 the true names, capacities, connections, and responsibilities of the Defendants
18 are ascertained.

19
20 **JURISDICTION & VENUE:**

21 7. The Court has subject matter jurisdiction over the action pursuant to 28
22 U.S.C. § 1331 and § 1343(a)(3) & (a)(4) for violations of the Americans with
23 Disabilities Act of 1990, 42 U.S.C. § 12101, et seq.

24 8. Pursuant to supplemental jurisdiction, an attendant and related cause
25 of action, arising from the same nucleus of operative facts and arising out of
26 the same transactions, is also brought under California's Unruh Civil Rights
27 Act, which act expressly incorporates the Americans with Disabilities Act.

28 9. Venue is proper in this court pursuant to 28 U.S.C. § 1391(b) and is

1 founded on the fact that the real property which is the subject of this action is
2 located in this district and that Plaintiff's cause of action arose in this district.

3
4 **FACTUAL ALLEGATIONS:**

5 10. Plaintiff went to Summit Marble & Cabinet in December 2018, January
6 2020, February 2020, March 2020 and July 2020 with the intention to avail
7 himself of its goods or services motivated in part to determine if the
8 defendants comply with the disability access laws.

9 11. Summit Marble & Cabinet is a facility open to the public, a place of
10 public accommodation, and a business establishment.

11 12. Unfortunately, on the dates of the plaintiff's visits, the defendants failed
12 to provide wheelchair accessible parking in conformance with the ADA
13 Standards as it relates to wheelchair users like the plaintiff.

14 13. Summit Marble & Cabinet provides parking to its customers but fails to
15 provide wheelchair accessible parking.

16 14. A few problems encountered by the plaintiff is that there were no van-
17 accessible parking spaces and there were slopes that exceeded 2.1% in the
18 parking space marked and reserved for persons with disabilities. Additionally,
19 there were not enough parking spaces for wheelchair users in the parking lot.

20 15. Plaintiff believes that there are other features of the parking that likely
21 fail to comply with the ADA Standards and seeks to have fully compliant
22 parking available for wheelchair users.

23 16. On information and belief the defendants currently fail to provide
24 wheelchair accessible parking.

25 17. Additionally, on the dates of the plaintiff's visits, the defendants failed
26 to provide wheelchair accessible paths of travel in conformance with the ADA
27 Standards as it relates to wheelchair users like the plaintiff.

28 18. Summit Cabinet and Granite provides paths of travel to its customers

1 but fails to provide wheelchair accessible paths of travel.

2 19. A few problems that plaintiff encountered is that the ramp that runs up
3 to the entrance did not have a level landing. What is more, the ramp had a slope
4 that was too steep for plaintiff.

5 20. Plaintiff believes that there are other features of the paths of travel that
6 likely fail to comply with the ADA Standards and seeks to have fully compliant
7 paths of travel available for wheelchair users.

8 21. On information and belief the defendants currently fail to provide
9 wheelchair accessible paths of travel.

10 22. Moreover, on the dates of the plaintiff's visits, the defendants failed to
11 provide wheelchair accessible door hardware in conformance with the ADA
12 Standards as it relates to wheelchair users like the plaintiff.

13 23. Summit Marble & Cabinet provides door hardware to its customers but
14 fails to provide wheelchair accessible door hardware.

15 24. The problem that plaintiff encountered is that the entrance door
16 hardware had a panel style handle that required tight grasping to operate.

17 25. Plaintiff believes that there are other features of the door hardware that
18 likely fail to comply with the ADA Standards and seeks to have fully compliant
19 door hardware available for wheelchair users.

20 26. On information and belief the defendants currently fail to provide
21 wheelchair accessible door hardware.

22 27. These barriers relate to and impact the plaintiff's disability. Plaintiff
23 personally encountered these barriers.

24 28. As a wheelchair user, the plaintiff benefits from and is entitled to use
25 wheelchair accessible facilities. By failing to provide accessible facilities, the
26 defendants denied the plaintiff full and equal access.

27 29. The failure to provide accessible facilities created difficulty and
28 discomfort for the Plaintiff.

1 30. The defendants have failed to maintain in working and useable
2 conditions those features required to provide ready access to persons with
3 disabilities.

4 31. The barriers identified above are easily removed without much
5 difficulty or expense. They are the types of barriers identified by the
6 Department of Justice as presumably readily achievable to remove and, in fact,
7 these barriers are readily achievable to remove. Moreover, there are numerous
8 alternative accommodations that could be made to provide a greater level of
9 access if complete removal were not achievable.

10 32. Plaintiff will return to Summit Marble & Cabinet to avail himself of its
11 goods or services and to determine compliance with the disability access laws
12 once it is represented to him that Summit Marble & Cabinet and its facilities
13 are accessible. Plaintiff is currently deterred from doing so because of his
14 knowledge of the existing barriers and his uncertainty about the existence of
15 yet other barriers on the site. If the barriers are not removed, the plaintiff will
16 face unlawful and discriminatory barriers again.

17 33. Given the obvious and blatant nature of the barriers and violations
18 alleged herein, the plaintiff alleges, on information and belief, that there are
19 other violations and barriers on the site that relate to his disability. Plaintiff will
20 amend the complaint, to provide proper notice regarding the scope of this
21 lawsuit, once he conducts a site inspection. However, please be on notice that
22 the plaintiff seeks to have all barriers related to his disability remedied. See
23 *Doran v. 7-11*, 524 F.3d 1034 (9th Cir. 2008) (holding that once a plaintiff
24 encounters one barrier at a site, he can sue to have all barriers that relate to his
25 disability removed regardless of whether he personally encountered them).

26
27 **I. FIRST CAUSE OF ACTION: VIOLATION OF THE AMERICANS**
28 **WITH DISABILITIES ACT OF 1990** (On behalf of Plaintiff and against all

Defendants.) (42 U.S.C. section 12101, et seq.)

34. Plaintiff re-pleads and incorporates by reference, as if fully set forth again herein, the allegations contained in all prior paragraphs of this complaint.

35. Under the ADA, it is an act of discrimination to fail to ensure that the privileges, advantages, accommodations, facilities, goods and services of any place of public accommodation is offered on a full and equal basis by anyone who owns, leases, or operates a place of public accommodation. See 42 U.S.C. § 12182(a). Discrimination is defined, inter alia, as follows:

- a. A failure to make reasonable modifications in policies, practices, or procedures, when such modifications are necessary to afford goods, services, facilities, privileges, advantages, or accommodations to individuals with disabilities, unless the accommodation would work a fundamental alteration of those services and facilities. 42 U.S.C. § 12182(b)(2)(A)(ii).
- b. A failure to remove architectural barriers where such removal is readily achievable. 42 U.S.C. § 12182(b)(2)(A)(iv). Barriers are defined by reference to the ADA Standards.
- c. A failure to make alterations in such a manner that, to the maximum extent feasible, the altered portions of the facility are readily accessible to and usable by individuals with disabilities, including individuals who use wheelchairs or to ensure that, to the maximum extent feasible, the path of travel to the altered area and the bathrooms, telephones, and drinking fountains serving the altered area, are readily accessible to and usable by individuals with disabilities. 42 U.S.C. § 12183(a)(2).

36. When a business provides parking for its customers, it must provide accessible parking.

37. Here, accessible parking has not been provided in conformance with the ADA Standards.

38. When a business provides paths of travel, it must provide accessible paths of travel.

39. Here, accessible paths of travel have not been provided in conformance with the ADA Standards.

40. When a business provides facilities such as door hardware, it must provide accessible door hardware.

41. Here, accessible door hardware has not been provided in conformance with the ADA Standards.

42. The Safe Harbor provisions of the 2010 Standards are not applicable here because the conditions challenged in this lawsuit do not comply with the 1991 Standards.

43. A public accommodation must maintain in operable working condition those features of its facilities and equipment that are required to be readily accessible to and usable by persons with disabilities. 28 C.F.R. § 36.211(a).

44. Here, the failure to ensure that the accessible facilities were available and ready to be used by the plaintiff is a violation of the law.

II. SECOND CAUSE OF ACTION: VIOLATION OF THE UNRUH CIVIL RIGHTS ACT (On behalf of Plaintiff and against all Defendants.) (Cal. Civ. Code § 51-53.)

45. Plaintiff repleads and incorporates by reference, as if fully set forth again herein, the allegations contained in all prior paragraphs of this complaint. The Unruh Civil Rights Act (“Unruh Act”) guarantees, inter alia, that persons with disabilities are entitled to full and equal accommodations, advantages, facilities, privileges, or services in all business establishment of every kind whatsoever within the jurisdiction of the State of California. Cal.

1 Civ. Code § 51(b).

2 46. The Unruh Act provides that a violation of the ADA is a violation of the
3 Unruh Act. Cal. Civ. Code, § 51(f).

4 47. Defendants' acts and omissions, as herein alleged, have violated the
5 Unruh Act by, inter alia, denying, or aiding, or inciting the denial of, Plaintiff's
6 rights to full and equal use of the accommodations, advantages, facilities,
7 privileges, or services offered.

8 48. Because the violation of the Unruh Civil Rights Act resulted in difficulty,
9 discomfort or embarrassment for the plaintiff, the defendants are also each
10 responsible for statutory damages, i.e., a civil penalty. (Civ. Code § 55.56(a)-
11 (c).)

12 49. Although the plaintiff encountered frustration and difficulty by facing
13 discriminatory barriers, even manifesting itself with minor and fleeting
14 physical symptoms, the plaintiff does not value this very modest physical
15 personal injury greater than the amount of the statutory damages.

16
17 **PRAYER:**

18 Wherefore, Plaintiff prays that this Court award damages and provide
19 relief as follows:

20 1. For injunctive relief, compelling Defendants to comply with the
21 Americans with Disabilities Act and the Unruh Civil Rights Act. Note: the
22 plaintiff is not invoking section 55 of the California Civil Code and is not
23 seeking injunctive relief under the Disabled Persons Act at all.

24 2. Damages under the Unruh Civil Rights Act, which provides for actual
25 damages and a statutory minimum of \$4,000 for each offense.

26 3. Reasonable attorney fees, litigation expenses and costs of suit, pursuant
27 to 42 U.S.C. § 12205; and Cal. Civ. Code §§ 52.
28

1 Dated: November 6, 2020

CENTER FOR DISABILITY ACCESS

2
3 By:



4
5 Amanda Seabock, Esq.
6 Attorney for plaintiff
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28